

INTRODUCTION

Where were we in January? Following on from the feedback received from some subscribers along with our internal team, we have changed the 4-monthly release of *Building a Safe Workplace Together* by one month to February, June and October.

In last year's January edition of *Building a Safe Workplace Together* we provided guidance on why businesses should set OHS targets; we trust that as we enter into February, these have been established. In this edition of *Building a Safe Workplace Together* we look into methods that you may use to support achieving these targets, along with a review of the changes to workplace bullying in line with the *Fair Work Act 2009*, and provide an update regarding harmonisation of the Work Health and Safety legislation.

We know that this edition will provide you with additional knowledge and tools that will support your business to establish and maintain positive health and safety behaviours.

The next issue of *Building a Safe Workplace Together* will be released in June (not May) 2014.

OVERVIEW

- What have we been up to lately?
- FREE OHS Consultations
- Moving Online
- Workplace Bullying
- Achieving Your OHS Targets
- OHS Harmonisation Update

WHAT HAVE WE BEEN UP TO LATELY?

Action OHS Consulting continues to work closely with our clients to build a safer workplace together. Some exciting projects undertaken since our last newsletter include:

- Development of a Bullying Procedure and delivery of Bullying Training to managers and workers. Following this project we have been engaged to review, develop and update the company's HR Manual.
- Delivering noise and dust monitoring across quarry sites, manufacturing sites, and one large, well-known national retailer. This support involved establishing the methodology and identification of exposure groups.
- Hazard management support that has included the development of intricate Traffic Management Plans and Chemical Risk Assessments.

Along with the above work, Action OHS Consulting continues to support clients with OHS Manual development and review/audit, workplace training and workplace ergonomics. For more details on our service offering, please follow the link to the [Action OHS Consulting website](http://www.actionohs.com.au).

FREE OHS CONSULTATIONS

Does your business employ less than 200 employees? You may be eligible.

Contact us NOW: info@actionohs.com.au

MOVING ONLINE...

Compliance Software

Online Ergonomics (Safe Workstation Setup) Module

OHS/WHS Management System Software

- ✓ Are OHS Compliance activities being **forgotten** or taking up significant time to follow-up on?
- ✓ **Losing** OHS Records such as Incident Report Forms, or are these taking **too long** to receive?
- ✓ **Wasting time** maintaining incident registers?
- ✓ Do licencing or training requirements get **missed**?
- ✓ Are obsolete health and safety documents still active in your workplace?

Are you...

Operating over multiple sites?

Forever frustrated and looking for a simpler way?

Register your interest in a demonstration:

info@actionohs.com.au.

Workstation Assessment Online Training

Are workstation assessments taking up valuable internal resource time? Or, are consultants putting a financial strain on your business?

Try our demo

<http://www.actionohs.com.au/client/>

Username: ErgoDemoActionOHS

Password: Demo

The module will support you to ensure that your employees understand what safe workstation setup looks like when working in the office or at home.

Register your interest in this innovative module:

info@actionohs.com.au.

WORKPLACE BULLYING

The *Fair Work Act 2009* amendment for bullying came into force on 1 January 2014 and allows persons who feel unable to seek recourse within the business to go directly to the Fair Work Commission for assistance. The Commission may investigate and/or issue a stop-bullying order directing the company to take any action they see fit (other than monetary compensation) to prevent an ongoing threat to the health and safety of the worker.

Under the *Fair Work Amendment Act* bullying happens when:

- An individual or group repeatedly behaves unreasonably towards a worker or group, and
- The behaviour creates a risk to health and safety.
- Bullying does not include:
 - One-off instances of insensitivity or rudeness, or
 - Reasonable management activities carried out in a reasonable manner.

To apply to the Commission a worker must be working for a constitutionally covered business. A constitutionally covered business includes:

- Constitutional corporations (e.g. Pty Ltd and Ltd businesses),
- The Australian Government and its agencies,
- Sole traders, partnerships and trustees in ACT and NT, and
- Incorporated volunteer associations that have at least one employee.

If a worker doesn't work for a constitutionally covered business, they cannot apply to the Fair Work Commission to stop bullying. However, they can get advice from the occupational/work health and safety body in their state or territory.

There are no time limits for making an anti-bullying application but the worker must still be working at the business. Workers who have been dismissed cannot apply for an order, however; they may still be able to pursue an unfair or unlawful termination claim.

The key preventative measures that employers can take to protect their workers' psychological safety, and manage potential claims, include:

- Ensuring there are robust bullying, harassment and discrimination policies and procedures in place, endorsed by senior management;
- Ensure there are established and accessible reporting channels. These will include:
 - An implemented Grievance/Issue Resolution Workflow;
 - Incident Reporting Procedure and associated forms;
 - Providing training and/or information to workers regarding what is, and what isn't acceptable workplace behaviour;
 - Provide guidance to workers defining where they can seek support. Depending on your workplace, this may be

non-employer funded (by providing contacts to LifeLine, BeyondBlue, etc.); or employer funded using an Employee Assistance Program (EAP) provider.

- Involve your HSRs and Safety Committee to ensure that the business' actions have been communicated to your employees. This may be done via: training (online or face-to-face), tool box talks or providing workplace bullying information on the safety noticeboard.

The duty of care to monitor workers' health and safety includes psychological health. Remember, watching for early warning signs could help prevent a bullying issue before damage occurs.

It is not uncommon for major bullying or stress claims to have 3 months of warning signals that you, as the employer, could have picked up on to address the workers concerns before it escalated.

**Information sourced from Fair work Ombudsman website (<http://www.fairwork.gov.au/>)*



ACHIEVING YOUR OHS TARGETS

An OHS Target without a plan is just a wish. Once your business has proactively established OHS targets, it is important that as a business you identify OHS activities that can support you to achieve these Targets.

Often clients advise us that they have targets and have identified activities; however, they struggle to implement. This commonly results from the person responsible for the delivery of the OHS activities not being identified or not being given adequate resources, timeframes for completion of the OHS activity not being set, and review timeframes to monitor the OHS activity not being scheduled. Whilst these can be addressed using our compliance software; for those who continue to manage OHS by paper, provided in our [OHS Tool Box](#) is an OHS Events/Activity Calendar. This will guide you to plan for the above considerations, assisting in achieving your set OHS Targets.

OHS HARMONISATION UPDATE

The process of harmonising Australia's Work Health & Safety (WHS) laws via the introduction of a model Act and Regulations (Model Legislation) to be adopted in each state and territory jurisdiction has been partly successful. Progress has been slow and has met significant opposition in some states. There remain two non-participating states, and in those jurisdictions that have introduced the Model Legislation, some of the model provisions have been varied.

PARTICIPATING STATES AND TERRITORIES

Five jurisdictions introduced the Model Legislation from 1 January 2012 - the Commonwealth, New South Wales, Queensland, the Australian Capital Territory and the Northern Territory. South Australia and Tasmania joined them commencing from 1 January 2013.

In Victoria, the Government has indicated that it will not adopt the Model Legislation in its current form, although it still supports the principle of harmonisation. The reason cited for its rejection of the Model Legislation was the cost to small business of transitioning to the new legislation.

In Western Australia, whilst the Government is also committed to the principle of adopting harmonised laws, progress has been slow. The Western Australian Government has indicated that it does not intend to adopt all of the Model Legislation but will adopt most of it. In relation to timing, the Western Australian Government:

1. is conducting a comprehensive analysis of the possible impact of the model regulations and codes of practice on business, workers and the local economy; and
2. will not consider adopting the Model Legislation until it is in a position to introduce separate mining safety laws and regulations, which it is currently updating.

VARIATIONS TO THE MODEL LEGISLATION

There are significant variations to the Model Legislation:

1. Coverage - it has not been adopted in some jurisdictions for the mining industry. Queensland and Western Australia will retain separate WHS legislation dealing with the mining industry.
2. Alterations to clauses in the Model Legislation have been, or will be, passed in some jurisdictions. These include the following variations in the jurisdictions referred to:
 - a. New South Wales - allowing unions, not just the regulator, to prosecute employers for all lower level offences (Category 3 offences) plus other offences where the regulator has rejected a recommendation from the Director of Public Prosecutions to prosecute.

- b. South Australia - retaining the privilege against self-incrimination during the investigation process for health and safety breaches. This privilege was partially dispensed with in the Model WHS Act.
- c. Queensland - the Queensland Government conducted a roundtable review of the Model Legislation last year with key business groups and unions. Outcomes from that review include the Government:
 - giving consideration to removing "contractors and subcontractors" from the definition of "workers";
 - considering whether right of entry powers should be removed from the Model WHS Act or amended;
 - developing guidance on the meaning of "reasonably practicable" and how control is relevant to the assessment of whether something was reasonably practicable; and
 - recommending that a number of the second stage model codes of practice (mainly construction related) not be adopted in Queensland.
- d. Western Australia - the Government has indicated that there are 4 areas of the Model Legislation which it does not agree with and will not be adopting. These areas are:
 - penalty levels - it considers that the proposed penalty levels could be unreasonably punitive and does not support the size of those increases;
 - union right of entry - it considers that right of entry laws should be contained in industrial relations legislation rather than in WHS laws;
 - the capacity of Health and Safety Representatives (HSRs) to direct cessation of work - it believes this decision should remain with individual workers and not be placed upon HSRs; and
 - the reverse onus of proof in WHS related discrimination matters - the Government will not adopt this, considering that its inclusion is contrary to one of the issues that motivated the drive to harmonisation (being the reverse onus of proof that previously applied to prosecutions in some jurisdictions).

If you would like assistance in understanding the operational approach that your business should take in light of the harmonised legislation, please [contact us](#).